FILED

MAY 29 2003

CATHY A. CATTERSON
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AMERICAN RAISIN PACKERS, INC, a California corporation, Plaintiff - Appellant, v. U.S. DEPARTMENT OF AGRICULTURE, Defendant - Appellee.	No. 02-15602 D.C. No. CV-01-05606-AWI/SMS MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Argued and Submitted May 12, 2003
San Francisco, California

Before: HAWKINS and W. FLETCHER, Circuit Judges, and BREYER,**
District Judge.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Honorable Charles R. Breyer, United States District Judge for the Northern District of California, sitting by designation.

The decision of the United States Department of Agriculture ("USDA") to debar American Raisin Packers ("American Raisin") for the unintentional misrepresentation of samples submitted for inspection was reasonable. The USDA's interpretation of 7 C.F.R. § 52.54(a)(1)(ii) as encompassing both innocent and willful misrepresentation was both rational and consistent with the purpose of the regulation. See Alhambra Hosp. v. Thompson, 259 F.3d 1071, 1074 (9th Cir. 2001).

American Raisin's contention that 7 U.S.C. § 1622(h) prohibits debarment for innocent or negligent misconduct is unavailing. Section 1622(h) provides ample authority for the promulgation of Section 52.54, in addition to establishing penalties for other abuses. American Raisin's claim that 5 U.S.C. § 558 requires that a party be given an opportunity to cure its misrepresentation before it is debarred also fails because Section 558 applies only to the revocation of a license and is not otherwise applicable to the facts of this case.

Accordingly, we affirm the district court's summary judgment grant to USDA.

AFFIRMED.